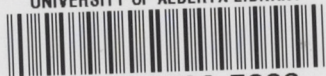


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# **LAWS**

## **OF INTEREST TO THE WOMEN OF ALBERTA**

Published by the  
Women's Cultural and Information Bureau  
Alberta Government

REVISED AUGUST, 1969

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## INTRODUCTION

**T**HIS booklet contains a summary of some laws in force in Alberta which may be of particular interest to women. It is a general statement of these laws and meant only as a guide. Where an actual problem is involved, please consult a lawyer.

Complete copies of the Statutes summarized are available at a nominal fee from the Queen's Printer, 10255 - 104 Street, Edmonton, Alberta. Additional copies of this booklet are available, free of charge, from the Women's Cultural and Information Bureau, 204 Legislative Building, Edmonton, Alberta. Phone 229-3970.



## BACKGROUND OF THE LAW

THE Province of Alberta was established in 1905 by The Alberta Act, an Act of the Parliament of Canada. The Province was created out of part of the Northwest Territories and was given the laws then in force in the Territories. The Territories, themselves, were established in 1870 by the Northwest Territories Act, which provided that the laws to be in force in the Territories were the laws of England as they stood on July 15, 1870:

- (a) insofar as they were applicable to the Territories, and
- (b) insofar as they had not been or were not thereafter repealed, altered or amended by the Parliament of the United Kingdom, the Parliament of Canada or the Legislative Assembly of the Northwest Territories.

This power to change the law and make new law is now shared by the Parliament of Canada and the Legislature of Alberta. This power is divided between the two governments by The British North America Act, 1867, and generally speaking neither government can make laws with respect to matters within the jurisdiction of the other. Thus, the Legislature has the right to legislate on such subjects as property and civil rights, municipal government, solemnization of marriage and other matters of a local nature, while Parliament has the right to make laws concerning crime, currency and banking, divorce, bankruptcy, trade and commerce and other matters of country wide importance.

Although both Parliament and the Legislature have passed many statutes dealing with different matters within their respective jurisdictions, they have not completely replaced the adopted laws of England, so that much of our actual law, as well as the history and traditions of our law, dates from before the existence of Alberta and Canada; in some instances hundreds of years before. Many of these old laws have not been changed because there is no real need to change them. The laws are a reflection of the needs and beliefs of the society that made them and if these never change, or change very little with the passage of time, there is no or little need to change the law. But when any need or belief does change the change is reflected in the law.

The attitude of society toward women has changed greatly, particularly over the last hundred years. After being for many years in an inferior position, women have, largely through their own efforts, brought themselves to the position of being recognized as entitled to equal consideration with men. This change has resulted in many changes in the law. Various rights formerly held only by men are now shared by women. But along with these rights have come various duties and liabilities; certain privileges and protections that were thought appropriate to an inferior sex have been removed from the law. There are, of course, instances where the law does distinguish between the sexes. Some of the more important instances where it is the same and where it differs are set out in this booklet.





# THE FRANCHISE

## FEDERAL ELECTIONS (THE CANADA ELECTION ACT)

WITH certain exceptions every man and woman in Canada is qualified to vote in a federal election if he or she:

- (a) is of the full age of twenty-one years,
- (b) is a Canadian citizen or British subject,
- (c) has been ordinarily resident in Canada for the preceding twelve months.

Among those unable to vote are the Chief Electoral Officer, the Assistant Chief Electoral Officer, judges, prison inmates, and persons of unsound mind. The returning officer for each electoral division cannot vote except to break a tie vote.

An election is commenced by a writ directed to the returning officer who then is responsible for the preparation of a list of electors. To prepare the preliminary list two enumerators are appointed for each urban polling division and one enumerator for each rural polling division. The information obtained by the enumerators is then publicly posted. Any errors or omissions in the preliminary list can be corrected by applying to the revising officer.

Qualified voters who have been omitted from the final list of electors in urban areas may vote if they obtain a certificate from the returning officer. In rural areas a qualified voter omitted from the list of electors may vote upon being vouched for by an elector whose name is on the list and upon taking an oath that he is qualified.

To be eligible as a candidate a person must be qualified to vote. But a person who is convicted of corrupt practice, persons directly or indirectly holding contracts with the government, persons in the employ of the government of Canada and members of provincial government legislatures are not eligible.

## PROVINCIAL ELECTIONS (THE ELECTION ACT)

Any Canadian citizen or British subject of the full age of nineteen years, who on the day the writ for an election is issued had resided in Alberta for the preceding twelve months and is ordinarily resident in an electoral division, may vote in a provincial election.

Those not entitled to vote are judges, mentally incompetent persons, prison inmates and persons convicted of corrupt practices.

The procedure in preparing the list of electors is similar to that in federal elections.

A person qualified to vote but whose name is not on the list of electors in any electoral division may vote upon being vouched for by an elector and upon taking an oath. Provision is now made for swearing in city voters at a special poll in each city constituency. Rural voters, as before, can be sworn in at the polling station.

Voting is to be done in secret but where a person is unable to personally mark his or her ballot because of physical incapacity he or she may direct the deputy returning officer to mark the ballot. This is to be done in the presence of the poll clerk and the agents of the candidates and no other persons. A blind person is entitled to take a friend into the polling booth to mark his or her ballot. When advisable because of the number of electors in the hospital, a special hospital poll for all city voters in that hospital will be serviced by one group of poll clerks under a deputy returning officer.

Persons who are members of the Senate or House of Commons of Canada or employees of the Government of Canada or the Government of Alberta, are not eligible to be members of the Legislative Assembly of Alberta, nor, with some exceptions are persons who hold contracts with the Government of Alberta. Section 59 of The Legislative Assembly Act states:

“59. Under this Act, women are upon an absolute equality with men, have the same rights and privileges as men, and are subject to the same penalties and disabilities as men.”

## MUNICIPAL ELECTIONS

The law relating to municipal elections is contained in The Municipal Elections Act which governs all types of municipalities.

The persons qualified to vote in municipal elections are those whose names appear on the assessment roll in respect of land or business liable to taxation and persons who are Canadian citizens or British subjects of the full age of nineteen years and who have resided in the municipality for 12 months immediately preceding the date of the next election.

As in federal and provincial elections a list of voters is prepared. Qualified persons whose names are omitted from the list may vote upon taking an oath that they are qualified.

Only proprietary electors are entitled to vote on by-laws. Generally, a proprietary elector is a person who is entitled to vote in an election and whose name appears on the assessment roll in respect of land liable to taxation.

To be elected mayor or a member of the council a person must be qualified to vote in the election, must be twenty-one years of age, a Canadian or British



subject, be able to speak, read and write the English language and be a resident for 12 consecutive months immediately preceding nomination day.

Persons connected with the administration of justice, city employees, and certain persons holding contracts with the municipality are not eligible.

### SCHOOL BOARD ELECTIONS (THE SCHOOL ACT)

The persons entitled to vote in the election of school board trustees are:

- (a) in a city or town district, those persons entitled to vote in the municipal elections;
- (b) in a district outside a city or town, any Canadian citizen of the full age of nineteen years who is the owner or tenant of property liable to assessment for school purposes, and the spouse of such person.

# CITIZENSHIP

THE status of "Canadian citizen" was created on January 1, 1947, under the Canadian Citizenship Act. A person is a natural born Canadian citizen if born in Canada or on a Canadian ship. The child of a Canadian father is also considered a natural born citizen, no matter where the child is born, so long as that child's birth is registered with Canadian authorities within two years of birth. If born out of wedlock to a Canadian mother the child is also considered a Canadian citizen if duly registered.

Under this Act an alien cannot acquire citizenship by simply marrying a Canadian citizen. The wife of a Canadian citizen may become a citizen only after living one year in Canada, applying for citizenship and meeting all other citizenship conditions. However, any woman who was a "landed" immigrant in Canada prior to January 1, 1947 and married a Canadian citizen prior to that date automatically became a Canadian citizen. Any British subject who lived in Canada for five years prior to January 1, 1947, following "landing" also automatically became a Canadian citizen. Marriage of a woman to an alien after January 1, 1947, does not result in loss of Canadian citizenship. Prior to this date loss by marriage did occur in some cases, depending on the husband's citizenship.

To become a Canadian citizen, an adult must apply on his own behalf. General requirements are:

- (1) admitted to Canada for permanent residence (known as being "landed").
- (2) resided in Canada 5 of 8 years immediately preceding filing application. Persons living in Canada before obtaining "landed immigrant" status may count half of each full year before "landing".
- (3) resided in Canada for 12 of 18 months immediately preceding application.
- (4) at least 21 or spouse of and residing in Canada with Canadian citizen.
- (5) of good character and not under order of deportation.
- (6) adequate knowledge of English or French unless:
  - (a) 40 or more at "landing" and over 10 years continuous residence in Canada.
  - (b) under 40 at "landing" and over 20 years continuous residence in Canada.
  - (c) spouse, widow or widower of a Canadian citizen.



- (7) adequate knowledge of responsibilities and privileges of Canadian citizenship.
- (8) intend to comply with Oath of Allegiance.
- (9) intend to have place of domicile permanently in Canada.

Aliens should file citizenship applications with a Court. Special Courts of Citizenship in Alberta are located in Calgary and Edmonton.

British subjects may file applications directly with the local Court or the Registrar who, if the application is approved, will forward a certificate to the applicant.

### THE HUMAN RIGHTS ACT

The Human Rights Act provides that no person or class of persons shall be denied accommodation, services or facilities available in places to which the public is customarily admitted or be discriminated against in such places. Nor shall they be denied occupancy or be discriminated against in respect of rental of a self contained dwelling unit in a building which contains three or more such units for rent. Similar protection is extended persons seeking employment and in employment as well as in respect of membership in trade unions and employer organizations.

The Act does not apply to employment in private homes or in exclusively religious, philanthropic, educational or social organizations not operated for private profit or where a bona fide occupational qualification exists. Provision is made for effective enforcement of the legislation. The administrator is responsible for administering the Act, developing educational programmes and promoting the principles established by the Act.

# **PROPERTY AND CIVIL RIGHTS**

## **THE SEX DISQUALIFICATION REMOVAL ACT**

**T**HIS Act which was passed by the Legislature in 1930 declares that:

"A person shall not be disqualified by sex or marriage from the exercise of any public function, or from being appointed to or holding any civil or judicial office or post, or from entering or assuming or carrying on any civil profession or vocation, or for admission to any incorporated society."

## **THE JURY ACT**

Juries in Alberta consist of six persons in civil cases and twelve persons for criminal cases. Juries may be used in both civil and criminal trials, but civil juries are very seldom used. To be eligible as a juror a person must be twenty-one years of age and a Canadian citizen or a natural born British subject. Certain classes of people, such as firemen, policemen, doctors, clergymen, nurses and members of the armed forces are exempt from jury service. Women are eligible to sit on juries but no woman can be compelled to serve without her prior consent. In consequence women are not usually called for jury service.

Women also have another privilege in relation to juries. If one of the parties to an action being tried with a jury is a woman she is entitled to have half of the jury composed of women.

## **THE CHANGE OF NAME ACT**

At birth a person, if legitimate, inherits the surname of his or her father. Except when it is done for the purpose of fraud, nothing in the law prohibits a person from adopting or assuming any name he or she desires.

Under The Change of Name Act, 1961, a procedure is provided for the registration of a change in name and for the substitution of the new name on official records such as birth and marriage certificates.

An application for a change of name may be made only by a person who is nineteen years of age or older, who is a Canadian citizen, or British subject and who has resided in Alberta for three months preceding the application. A married woman living with her husband cannot apply to change her surname and a married man can only apply to change his surname with the consent of his wife. The registration of the change in the husband's surname effects a similar change in his wife's and children's surnames. The husband also may, with his wife's consent, apply to change the given name of his wife and children. Where the child is twelve years of age or older, his or her consent is also required.

**PROPERTY HOLDING**

A woman has the same rights of obtaining, holding and disposing of property as a man.

Property may be held in the name of one or more persons. Where more than one person has an interest in the same property they may own it as joint tenants or as tenants in common.

Joint tenancy is most commonly used by married couples in owning their home. Each has an equal interest in the property and it cannot be sold or mortgaged without each owner's consent. On the death of one of the owners his interest immediately and automatically passes to the surviving owner or owners upon the filing with the Land Titles Office of proof of death. It follows from this that an interest in land, as a joint tenant, cannot be disposed of by will. With tenancy in common a person can dispose of his or her interest by will.

**THE WILLS ACT**

Any mentally competent person of twenty-one years of age, or if married nineteen years of age, may make a will. The ordinary form of will is signed at the end by the testator (maker) in the presence of two witnesses who must sign in the presence of the testator and each other's presence. The witnesses must not be persons or spouses of persons who will receive anything under the terms of the will. Another form of will, known as a holograph will, is sometimes used. This is a will that is completely in the handwriting of the testator and needs no witnesses.

Great care must be taken in wording a will to ensure that it has the legal effect intended because when the time comes to give effect to it, the testator is not available to explain exactly what he meant and it is too late to make any changes or corrections in it. Because of the many legal problems involved, a will prepared by a person unfamiliar with the details of the laws relating to wills and the transmission of property may be ineffective to dispose of the testator's property. For example, a provision that is of uncertain meaning or that may result in property being tied up for an indefinite period can be invalid. In consequence a will prepared by a person without full knowledge of the relevant laws is not to be recommended.

A will may be revoked at any time, either by making a new will or by destroying the old one. A person's will is normally revoked upon his or her marriage unless the will specifically states that it is being made in contemplation of that particular marriage. A will may also lose its effectiveness, wholly or



partially, by the death of persons named as beneficiaries or by the testator during his lifetime disposing of property which he has devised in his will.

Wills are changed either by making a complete new will or making a codicil which is a document in the form of a will amending the original will.

When a person dies without a will, or leaves property that is not disposed of by a will, The Intestate Succession Act provides how the estate is to be distributed.

According to this Act as revised in 1964, if a man leaves an estate with a net value of less than \$20,000, the entire estate goes to the widow. Where the net value of the estate exceeds this amount, the widow receives \$20,000 and the remainder is divided:

- if one child, half to the widow and half to the child.
- if more than one child, a third to the widow and two thirds divided equally between the children.

If a beneficiary child is dead but survived by children, they receive what would have been the parent's share. Where there are no children, the widow receives the entire estate.

When there is no widow or descendants the estate goes to the deceased nearest kin who are determined in the following order: parents; brothers and sisters, or if dead, their children; grandparents; aunts and uncles; cousins. When no heirs survive the deceased person the estate goes to the University Commission under The Ultimate Heir Act.

Under the Domestic Relations Act a parent of an infant in a will may appoint a person to be guardian of an infant after the death of the parent.

THE FAMILY RELIEF ACT . . . Dealing With Provisions For A Deceased Person's Family . . . appears on pages 17 and 18.

### **ESTATE TAX REBATE ACT (ALBERTA)**

This Act provides a partial refund of estate taxes to relieve the tax burden on Alberta estates and to encourage investment in Alberta. The amount of estate tax rebate to eligible estates is 75% of the estate tax attributable to Alberta property. Payment of the rebate is dependant upon the Province receiving a share of the estate taxes levied by the Federal Government. There is a deadline of 90 days after assessment of federal tax involved in application for this rebate. Matters shall be determined for rebate purposes on the same basis as they are determined for estate tax purposes.

# **MATTERS RELATING TO MARRIAGE**

## **THE RIGHT TO MARRY**

**I**N ORDER to enter into a valid marriage each of the parties must meet certain requirements of age, mental capacity and status.

At the time of the marriage both parties must fully understand the nature of the marriage contract and fully consent to marry one another. There must not be a valid subsisting marriage of either of the parties with any other person. Certain marriages between persons who are closely related by blood or marriage are absolutely void for all purposes.

## **THE MARRIAGE ACT**

Marriage licence issuers are located in the larger centres throughout the province. There is no residence requirement in Alberta and a marriage licence is valid for a period of three months from the date of issue. A clergyman or marriage commissioner may only perform a marriage ceremony after receipt of a valid licence from the couple.

An applicant must have a blood test taken by a qualified practitioner within fourteen days of the marriage licence application. It is not necessary to await the result of the blood test. Applicants 60 or over are exempted from the blood test requirements. Divorced applicants are required to produce papers regarding final decree when applying for a marriage licence.

No person under sixteen may be married in Alberta unless a pregnant female or the mother of a living child. Marriage of persons under twenty-one requires consents, that of both parents (if alive) for under eighteen; and between the ages of eighteen and twenty-one the consent of one parent, or guardian.

Consent is not necessarily required for persons between the ages of eighteen and twenty-one who have been self supporting and living apart from parents for a minimum of three months preceding the date of application for marriage. However, they are required to take an affidavit of self support. The marriage licence issuer forwards the notice of application to the parents or guardian and there is a waiting period of eight days before the licence may be issued. If the parents or guardian wish to file a legal objection they may do so within the waiting period. Where no objection is received, the licence may be issued after expiration of this eight day waiting period. When a person under the age of twenty-one years is unable to obtain the consent of his or her parent or guardian, a judge of the supreme court or district court may in his discretion grant an order dispensing with the consent.

**THE MARRIED WOMEN'S ACT**

Under the old law a married woman was deemed to be so closely identified with her husband and so much under his control and influence that she could not be held responsible personally for wrongs committed by her and she could not sue personally for wrongs committed against her. While she could own property in her own name the power to dispose of it was in her husband's control. Generally speaking, an unmarried woman had the same rights and liabilities as a man, but when she married the husband assumed both her rights and her liabilities.

Today, the married woman has the same rights and liabilities as the unmarried woman, and The Married Women's Act states that a married woman:

- (a) is capable of acquiring, holding and disposing of any property,
- (b) is capable of making herself and being made liable in respect of a tort, contract, debt or obligation,
- (c) is capable, without her husband being joined as a party, of suing and being sued, either in contract, including a contract made between her and her husband, or in tort or otherwise, and
- (d) is subject to the law relating to bankruptcy and to the enforcement of judgments,

in all respects as if she were an unmarried woman.

**RIGHT OF WIFE TO PLEDGE HUSBAND'S CREDIT**

A wife while living with her husband has an implied power to pledge his credit for necessities for herself and for the needs of the household. The extent of this power varies with the standard of living of the couple.

This right exists unless the husband can show that she has not his authority. He may do this by showing that he has told tradespeople not to give her credit, that he has forbidden her to pledge his credit or that she has a substantial allowance on the understanding that she will not pledge his credit. If the husband has held his wife out as his agent he cannot afterward deny the agency though he may terminate it.

If a wife has been deserted by her husband or has had to leave him because of cruelty or other reasonable cause she becomes what is known as an agent of necessity. This means that unless he is paying her an allowance she can pledge his credit for necessities. This kind of agency cannot be ended by forbidding her to pledge his credit or by telling tradespeople not to give her credit. It may be terminated by misconduct on her part. If a wife leaves her husband without good cause she has no right to use his credit.



**THE DOWER ACT**

Dower rights are the rights given by The Dower Act to the spouse of a married person in respect of certain land and personal property of the married person. A wife has a dower right in her husband's property and a husband has a dower right in his wife's property. Under this Act a married person cannot dispose of what is known as the homestead without the consent of his or her spouse and after death his or her spouse is entitled to the use of that property for the rest of his or her life.

"Homestead" means a parcel of land on which a dwelling occupied by the owner as a residence is situated. In a city, town or village, it can consist of not more than four adjoining lots and outside a city, town, or village, of not more than a quarter section of land. As it is possible for a couple to own and reside in more than one dwelling during the course of their marriage it is possible for them to have more than one homestead at the same time. In such case the surviving spouse must decide which one he or she wishes to use.

An order of a judge may be obtained dispensing with the consent of the spouse to the disposition of a homestead by a married person when:

1. the married person and the spouse are living apart;
2. the whereabouts of the spouse is unknown;
3. the spouse is mentally incompetent or of unsound mind;
4. the married person has two or more homesteads.

If the judge thinks it proper to dispense with the spouse's consent he may in the proper case order the payment of a certain sum for the benefit of the wife.

If the husband disposes of a homestead without obtaining the required consent the wife may sue the husband for half the value or half of the selling price of the property, whichever is greater.

**THE FAMILY RELIEF ACT**

It is possible either under the terms of his will or where there is no will, under The Intestate Succession Act that a deceased person's family is not adequately provided for. In such cases the courts have power under The Family Relief Act to see that adequate provision is made out of the deceased's estate to provide proper maintenance and support for his dependants.

Dependants include the widow, children under nineteen years of age and children over nineteen who by reason of mental or physical disability are unable to earn a livelihood.

### **PRESUMPTION OF DEATH**

An order presuming a spouse dead may be granted when the spouse has been continually absent for a period of seven years and no evidence can be produced indicating that the spouse is still alive. This order entitles the remaining spouse to obtain a marriage licence and remarry but it does not dissolve the first marriage. Should the person presumed dead be shown to be alive at the time of the subsequent marriage the marriage is void. It does, however, protect the person who has remarried from a charge of bigamy.

## **THE DOMESTIC RELATIONS ACT**

### **JUDICIAL SEPARATION**

A husband or wife may petition for a decree of judicial separation on the grounds of adultery, cruelty, desertion for two years or more without reasonable cause, or failure to comply with an order for restitution of conjugal rights. "Cruelty" includes any conduct that is grossly insulting and intolerable or of such a character that the person seeking the separation could not reasonably be expected to be willing to live with the other after he or she has been guilty of such conduct.

### **ALIMONY AND MAINTENANCE**

When a wife is entitled to maintain an action for judicial separation she may, with that action, or separately, sue for alimony. As long as the husband pays the sum ordered, no matter how small, the wife is not entitled to pledge his credit for necessities. A change in the order may be made upon a change in the circumstances of the parties. The foregoing actions are conducted in the Supreme Court of Alberta.

### **PROTECTION ORDERS**

In addition to the foregoing, an alternative procedure is provided whereby a deserted wife may apply to a magistrate who may make an order requiring the husband to pay for the maintenance of his wife and family. If the magistrate decides that the wife was not deserted by the husband and not entitled to aid he may make an order restricted to the maintenance of the children. A divorced woman may also apply under this procedure for an order for maintenance restricted to the children.

**THE ALIMONY ORDERS ENFORCEMENT ACT**

This Act provides a means for the enforcement of alimony, maintenance and affiliation orders. The person against whom the order is made may be called before a judge and examined as to his means and ability to comply with the order. The judge may commit the person to gaol for a period of up to one year:

- (a) if he fails to appear for the examination, or
- (b) if he fails to give satisfactory answers to the questions asked, or
- (c) if he has disposed of any property with the intent of avoiding compliance with the order, or
- (d) if he has refused to comply with the order when he has sufficient means or ability or resources with which to comply.

**THE RECIPROCAL ENFORCEMENT OF MAINTENANCE ORDERS ACT**

In most cases where an alimony or maintenance order is made, both the husband and wife reside in Alberta. There are cases where the husband has left the Province and is therefore outside the jurisdiction of the Alberta courts. Even though the wife has obtained an alimony or maintenance order in Alberta it is of no effect in the province or country where the husband resides and it is necessary for the wife to take proceedings for an order against him in the province or country where he resides. The same is true where the wife is in another province and the husband has come to Alberta.

The Reciprocal Enforcement of Maintenance Orders Act is designed to meet this problem. Under this Act, arrangements are made with other provinces and countries (called reciprocating states) whereby alimony and maintenance orders made by Alberta courts may be registered with the courts of the reciprocating states. In return the orders of the courts of reciprocating states can be registered in the Alberta courts. The registered order can then be enforced as if it were an order of the court where it is registered.

**DIVORCE**

Divorce actions are conducted in the Supreme Court of Alberta according to the Divorce Act, which is a Federal Act applicable to all Provinces of Canada. Prior to the 1968 Federal Act the only grounds on which a divorce could be based was that of adultery, however, under the new Act the following grounds were added:



- (1) sodomy, bestiality or rape;
- (2) form of marriage with another person;
- (3) physical or mental cruelty of such a kind as to render intolerable the continued cohabitation of the spouses.

In addition to the above, an action for divorce may be presented to the Court by the husband or the wife where they are living separate and apart on the ground that there has been a permanent breakdown of their marriage by reason of one or more of the following circumstances:

- (a) the Respondent has been imprisoned for a period or an aggregate period of not less than three years during the five year period immediately preceding the presentation of the Petition for Divorce or has been imprisoned for a period of not less than two years immediately preceding the presentation of the Petition for an offence for which the sentence is for a term of ten years or more;
- (b) the Respondent has, for a period of not less than three years immediately preceding the presentation of the Petition, been grossly addicted to alcohol or a narcotic, and there is no reasonable expectation of the Respondent's rehabilitation within a reasonable foreseeable period;
- (c) the marriage has not been consummated and the Respondent, for a period of not less than one year, has been unable by reason of illness or disability to consummate the marriage or has refused to consummate it;
- (d) the Petitioner, for a period of not less than three years immediately preceding the presentation of the Petition, has had no knowledge of or information as to the whereabouts of the Respondent and, throughout that period, has been unable to locate the Respondent;
- (e) the spouses have been living separate and apart for other reasons for a period of not less than three years or by reason of the Petitioner's desertion of the Respondent for a period of not less than five years immediately preceding the presentation of the Petition.

Where marriage breakdown is listed as grounds for divorce the Court must be satisfied that no possibility exists for reconciliation of the husband and wife. Upon being satisfied that it is a proper case for divorce the Court grants a Decree Nisi. At this time the Court also decides on such matters as custody of the children, if any, and alimony and maintenance. There is then a waiting period of three months, after which, if no reason is shown why it should not, the Court

grants a Decree Absolute. This waiting period may be abridged by the Court if the Court is of the opinion that because of special circumstances it would be in the public interest to do so and if both parties agree and undertake that no appeal will be taken. It is only after the appeal period has expired that the parties are free to marry again.

The 1968 Divorce Act provides that the person who commences the action for divorce, either husband or wife, must be domiciled in Canada and the action must be commenced in the Province where one of the parties has been ordinarily resident for a period of one year immediately preceding the presentation of the Petition and has actually resided there for at least ten months of that period.

There is no provision in the Divorce Act for the Court hearing the petition for divorce to deal with the partition of property. Generally, in the absence of agreement between the parties, it is necessary to undertake a separate action.

# ***SOCIAL DEVELOPMENT***

## **THE DEPARTMENT OF SOCIAL DEVELOPMENT**

**T**HE Department of Public Welfare was changed to that of Social Development by The Department of Social Development Act, effective July 1st, 1969. This Act provides the legislative authority and responsibility for changing the focus of the department's financial assistance and other programs, from primarily that of maintenance and custody to that of social development of the individual or family in need. Unquestionably the basic needs of food, clothing, shelter, medical care and education are essential services of a department of social development. In addition there must be the creation of new opportunities such as job opportunity, expanded training and retraining, home management courses and the active assisting of individuals and families to utilize resources in order that they may reach their potential.

## **THE PUBLIC WELFARE ACT**

Under this Act an only parent who has the custody of and is personally caring for dependent children and is unable to earn sufficient income to support herself and the children has the right to apply for a social allowance. This allowance is based on individual need. As a social development measure the person concerned will be encouraged and helped to obtain the training, retraining and/or educational upgrading that will allow her to become self-supporting when the children are no longer in need of her constant presence in the home.

## **THE PREVENTIVE SOCIAL SERVICES PROGRAM**

Alberta is the first province in Canada in which the municipal and provincial governments are co-operating in a province-wide program of preventive services designed to develop social resources. Social resources are activities which are available to all members of a community to allow them to enrich their physical, mental, spiritual and social well-being. The purpose of developing these resources to the full is to give every Alberta family the opportunity to live more happily, more creatively and to prevent breakdown wherever possible.

The Preventive Social Services Act passed in 1966 provides the opportunity for local municipalities to plan and carry out such social resources as Homemaker Services, Family Life Education, Counselling Services, Day Care Centres, Head Start Programs, etc. Each local community determines what services are required and explores the use of volunteers and local funds before passing the project on for approval and the commitment of public monies.



# WELFARE OF CHILDREN

## THE CHILD WELFARE ACT

### NEGLECTED CHILDREN

THE Child Welfare Act provides for the protection of any unmarried boy or girl under eighteen years of age whose physical, educational, social or moral well-being is endangered by the failure, unfitness or inability of his parents or guardian.

Child Welfare Services throughout the Province of Alberta are under the administration of the Department of Social Development. When a child is found to be neglected, by a child welfare worker, the matter is thoroughly investigated and a report is submitted to the judge of a Juvenile Court. Such a judge may return the child to his parents, adjourn the case under the supervision of the child welfare worker or make the child a temporary ward of the Crown. If a child remains a temporary ward for a period of three years and it is not possible for the child welfare worker to help the parents provide a suitable home for the child or if it is felt before that time that the parents will never be able to care for the child properly, the matter is referred to the District Court where the judge will consider an application for permanent wardship.

### ADOPTION OF CHILDREN

The Department of Social Development strives to place all children who are permanent wards of the Director of Child Welfare, regardless of race, creed or color, in adoptive homes. The revision of The Child Welfare Act in 1966 provided a greater flexibility with regard to the religious aspect and increased the number of adoptive homes for many children who would not have had permanent families. Adoption orders give adoptive parents and children the same rights and obligations that parents and biological children have to each other. These orders are granted by judges of the District Court after they have assured themselves that the adopters are fit and proper persons to provide a home which is in the best interests of the child. All adoption procedures are commenced by application to the Director of Child Welfare, who in turn presents all adoption petitions to the court. Any adult person over the age of twenty-one years, single or married, can adopt a child. Generally an adoption order is granted after the child has been in the adoptive home for a period of one year.

### CHILDREN OF UNMARRIED PARENTS

The father of a child born out of wedlock may be held responsible for the

maintenance and care, medical and otherwise, of the mother of the child for three months preceding the birth and until such time after the birth as is necessary. He may also be required to pay a periodic sum toward the maintenance and education of the child until it reaches sixteen years of age or eighteen years if attending school, or mentally or physically incapable of earning his or her own living.

The mother of a child born out of wedlock, or the guardian of the child or the Director of Maintenance and Recovery may lay a complaint against the man alleged to be the father within 24 months of birth of the child and upon sufficient evidence being produced a paternity order will be made against him. The order sets out the payments to be made by the father which may be varied from time to time as the circumstances require.

### **THE LEGITIMACY ACT**

If the parents of a child born out of wedlock subsequently marry, the child is considered to be legitimate from birth.

Where a person whose spouse is presumed dead enters into another marriage that would have been valid if the spouse were in fact dead, any children of the subsequent marriage are considered to be legitimate even though the subsequent marriage turns out to be invalid because the spouse presumed dead was alive. Children of such a marriage subsequently annulled are considered legitimate.

### **THE JUVENILE DELINQUENTS ACT**

Under this Act of the Parliament of Canada youthful lawbreakers may be treated, not as criminals to be punished, but as delinquents requiring help and guidance and proper supervision. The juvenile age varies provincially throughout the country.

In Alberta, a juvenile delinquent is a boy under sixteen or a girl under eighteen who violates any provision of the Criminal Code or any other dominion or provincial statute or who is guilty of sexual immorality or any similar form of vice. It is also an offence under this Act for any person, including the parents of the juvenile, to aid, cause, promote or contribute to the commission of a delinquency.

Under the procedure provided by the Act, the parents of the juvenile must be notified and the trial may be held without publicity in a more informal manner than the usual strict court procedures.

## SCHOOL ATTENDANCE

This is dealt with at length under Section 398 of The School Act. In general, a pupil must attend "the school for the district in which his parent or guardian resides, if it provides instruction in the grade applicable to him", or the school to and from which transportation is provided for him by a Board or by his parent or guardian, from the ages of 7 to 16.

A clause in The School Act makes parents jointly and severally liable with their child for any damage to school property by that child. In 1968 authority was given, through revision of The School Act, for extension of instruction in the French language.

There is provision for school authorities to make expenditures to safeguard the health of pupils, supply children of indigent parents with textbooks and other supplies, and operate special classes for retarded children or those physically disabled.

# COURTS

## **FAMILY COURT**

The Family Court of Alberta is created by Provincial Statute to deal with social-legal problems that arise within the family. Family Courts are located in the major urban centres in the Province and in addition to being a court of law, usually professionally trained case workers are attached to the Family Court staff to provide counselling services to families in difficulties. The Family Court has both a criminal and civil jurisdiction.

The criminal jurisdiction of the court is confined to common assaults (married persons); willful non-support where the parties are residing together and Section 717 of the Criminal Code (an Information may be laid by a person who is fearful for his or her personal safety or that of his child or property).

The civil jurisdiction of the court is more extensive. There is jurisdiction to hear non-support actions under the Domestic Relations Act; Liquor Control Act (interdiction); Custody and Access; charges against adults under certain provisions of the Child Welfare Act; maintenance actions commenced under the Reciprocal Enforcement of Maintenance Orders Act; Enforcement of Supreme Court Maintenance Orders.

## **SURROGATE COURT**

These Courts were established by a 1967 Act to have jurisdiction over the administration of estates and guardianship of infants.

## **THE SMALL CLAIMS ACT COURT**

The Small Claims Act Court has jurisdiction in small debts up to five hundred dollars and in actions in tort up to a limit of two hundred dollars, but only in areas not specifically excluded by The Small Claims Act. There is no jurisdiction under this Act in respect of any case of which the Crown is a party unless the consent of the Attorney General is first obtained.

A person having a claim that may be adjudicated under this Act may obtain a Summons from a magistrate by delivering particulars of his claim and verifying it by oath. The plaintiff deposits \$4.00, but does not necessarily have to hire a lawyer.

Provisions are made under The Small Claims Act for proceedings for tenants to recover their damage deposits from their landlords. Under recent amendment to The Landlord and Tenant Act, landlords are required to account for damage deposits within 10 days after a tenant moves out. If there are any deductions the landlord must deliver a final statement of account and return the final balance, if any, to the tenant within 30 days after the tenant vacates.



**LEGAL AID**

LEGAL AID is available in Alberta to persons UNABLE TO HIRE A LAWYER ON ANY TERMS. Application for this service can be made at the LEGAL AID OFFICE of your district Court House.

CRIMINAL LEGAL AID may be extended to persons in relation to:

- Criminal prosecutions of indictable offences.
- Prosecutions under the provisions of the Narcotic Control Act.
- Prosecutions under The Juvenile Delinquents Act.
- Application for bail.
- Appeals.

CIVIL LEGAL AID may be extended to persons in relation to:

- Commencing legal proceedings.
- Defending legal proceedings.
- Being a party to legal proceedings.

All necessary legal grounds must exist or be shown to justify the taking or defending of appropriate court action.

**CONSUMER CREDIT**

With the Credit and Loan Agreement Act of 1967, Alberta enacted legislation protecting the consumer. The new Act applies to cash loans as well as financed purchases and states the following facts:

- Lenders must use standard procedures to calculate and disclose the true annual credit charge rates.
- Carrying charges must be expressed in dollars and cents as well as simple annual credit charge rates.
- Borrower must be informed as to amount and frequency of payments.
- Down payment and total amount loaned must be stated.
- All other costs of goods, including transportation and installation charges, must be stated.
- Extra charges to the borrower for not meeting payments must be stated in percentage per annum.
- Goods financed must be clearly described.

Under The Credit and Loan Agreement Act the office of Supervisor of Consumer Credit was established in Edmonton to provide information on credit requirements, classes of credit, types of consumer credit and the advantages and

disadvantages of both credit and cash buying. Advice on family financing and budgeting the family income is also supplied. The Act does not regulate rate of credit charges but it does help people to shop for credit with full knowledge of cost differences.

### DEBTORS' ASSISTANCE ACT

The Debtors' Assistance Act established the Debtors' Assistance Board in 1943. It replaced the Debt Adjustment Act of 1923. The Board provides a debt counselling service for families with financial problems. There are six offices in the Province, all in major cities, assisting families by providing the following:

1. Advice on family financing and budgeting of the family income.
2. Information on the effects and consequences of a garnishee, seizure or foreclosure.
3. A comprehensive debt consolidation plan under the "Orderly Payment of Debts Provisions." These provisions make it possible for the Board to help debtors adjust their debts and work out satisfactory arrangements with creditors.
4. Advice as to which obligations, if any, should not be included in a consolidation plan, perhaps because of the provisions of the Statute of Limitations, fraud in the inception of a contract, or other similar offences.
5. Information on personal bankruptcy procedures and on the Farmers' Creditors Arrangement Act.

# LABOUR WELFARE

UNDER The Alberta Labour Act provision is made for regulating hours of work, minimum wages and labour welfare generally. With certain exceptions, the maximum work week is fixed at forty-four hours. The Board of Industrial Relations which is established by this Act has power to fix different minimum wage rates for different industries and different types of employment.

Section 109 of the Labour Act provides that an employer must give the same rate of pay to male and female employees doing identical or substantially identical work. Complaints must be made in writing to the Chairman of the Industrial Relations Board. This same Board has the authority to:

- make safety regulations for factories regarding clothing of workers
- fix maximum weight that any female employee may be permitted to lift or carry
- control hours of work of pregnant women.

An order of the Board prohibits a female employee from commencing or ending a shift during the hours of 12:01 a.m. and 6:00 a.m. unless the employer provides safe transportation to her home. Under certain conditions employers must provide chairs for female employees. Women working with or about machinery shall meet certain safety regulations as to hair and types of jewelry worn.

The employment of children is governed by The Alberta Labour Act. No child under fifteen may be employed:

- (a) in any factory, shop or office building, or
- (b) in any other type of employment without the approval of the parents and the Board.

The Lieutenant-Governor in Council may make exceptions to the foregoing with respect to specific occupations. The employment of children 15 - 18 years in any type of work that may be injurious to life, limb, health, education or morals may also be prohibited. Or he may impose such conditions on their employment that he considers proper.

As an additional fact of interest, under The Coal Mines Regulations Act, only males over 17 are allowed to work underground in Alberta coal mines.

# **CRIMINAL OFFENSES**

**T**HE criminal law is set out in the Criminal Code, an Act of the Parliament of Canada. Most of its provisions apply equally to men and women but there are certain offences that are related specifically to women.

## **RAPE AND RELATED OFFENCES**

Everyone who commits rape is liable to imprisonment for life and to be whipped. A man commits rape when he has sexual intercourse with a woman not his wife without her consent or with her consent when the consent is extorted by fear of bodily harm or obtained by misrepresentation of the nature and quality of the act.

Sexual intercourse with a female under the age of fourteen years is punishable in the same manner. The fact that the female consented is not a defence to this charge. It is also a criminal offence to seduce a female under the age of eighteen and of previously chaste character.

## **INFANTICIDE**

A woman who by wilful act or omission causes the death of her newly born child is guilty of an offence. If her mind is disturbed as a result of giving birth to the child, the offence may be infanticide which is punishable by a maximum of five years imprisonment. But if her mental condition is normal she would be guilty of murder.

## **BIGAMY**

Bigamy is a criminal offence and is punishable by imprisonment for five years. The offence is committed when a person being married, goes through a form of marriage with another person and when a person knowing another person to be married goes through a form of marriage with that person. If the first marriage has been declared void by a court, or a divorce decree has been granted, or the spouse has been presumed dead or the person in good faith and on reasonable grounds believes the spouse is dead then a subsequent marriage may not be termed bigamous.

## **THE VENEREAL DISEASES PREVENTION ACT**

This Act specifies that anyone who knows or suspects he may be infected with venereal disease should consult a physician or attend a provincial clinic. If infected he must submit to the treatment ordered. Similarly a physician or someone in official capacity to know of venereal disease must report it to the



Director of the Division of Social Hygiene of the Department of Public Health. Treatment for venereal disease, whether given by a physician or the Department of Public Health, will be paid for by the provincial government as set out in this Act.

## ABORTION

The newly passed amendment to the Criminal Code provides for the appointment of a "Therapeutic Abortion Committee" in each accredited or approved hospital in a province. This committee is to be composed of at least three qualified medical practitioners who are appointed by the Board of the hospital. The function of this committee is to decide whether "the continuation of the pregnancy" of a female person "would or would be likely to endanger her life or health."

If the Therapeutic Abortion Committee of any hospital should issue a certificate that the continuation of pregnancy "would or would be likely to endanger" the "life or health" of the woman, a doctor who "in good faith" carries out the abortion in an accredited or approved hospital, and the woman who permits him to do so are not guilty of an indictable offence and are not liable to imprisonment for life.

The effect of this amendment is that it is no longer a criminal offence for the doctor to cause an abortion, or the woman to have it where it has been determined by the above-mentioned procedure that not having it would be likely to "endanger her life or health." The blessing of the law is not given to the abortion; its prohibition is merely removed in those cases.

# **GENERAL INFORMATION**

## **THE OMBUDSMAN**

By 1967 Act a Commissioner of the Alberta Legislature was appointed to investigate administrative decisions and acts of officials of the provincial government and its agencies. This is the Ombudsman, who investigates either on a complaint made to him by a person, or of his own motion. Complaints must be made in writing and investigations are private, with the complainant being informed of the results.

Generally speaking, the Ombudsman is not authorized to deal with complaints concerning private businesses, matters under municipal jurisdiction or problems of a personal nature. He can act only when the provincial government or one of its agencies is involved. An amendment to The Ombudsman Act, approved in 1968, defines the Workmen's Compensation Board as an agency within the purview of the Ombudsman.

## **THE HUMAN RESOURCES DEVELOPMENT AUTHORITY**

This is a committee of five Cabinet Ministers. Their responsibility is to encourage better co-ordination of operations between government departments; to encourage close co-operation between governmental and private agencies; to assist and encourage new programs to improve the effectiveness and quality of services to the people of Alberta.

Communications may be sent to the Director's office in the Legislative Building.

## **THE ALBERTA HUMAN RESOURCES RESEARCH COUNCIL**

This is a research body established by a 1967 Statute. It undertakes educational, social, economic and other research relating to the development of human resources in the province.

## **THE WOMEN'S CULTURAL AND INFORMATION BUREAU**

This Bureau was established through an Act of the Alberta Legislature in 1966 to commemorate the fiftieth year of women's franchise in Alberta. It was opened November 1st, 1966. The growing participation of women in business and community life and their desire for accurate information on a great variety of topics pointed up the need for such a Bureau.

The Women's Bureau collects and compiles information, opinions and other material on matters of concern to women, including information, opinions and

material on the cultural, social, legal, public and other rights, responsibilities, interests and privileges of women in Alberta. This booklet, "Laws of Interest to the Women of Alberta", is a bureau publication. Other information is available on a variety of topics in Fact Sheet form, and is available on request to women, women's organizations and others. Additionally, the Women's Bureau provides such other services and performs such other functions as may be decided by the Executive Council.



Additional free copies  
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available through

The Women's Cultural and Information Bureau,  
Legislative Building,  
EDMONTON, Alberta.









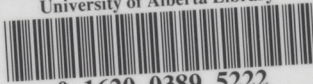
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